

Indiana Department of Environmental Management

Office of Water Management

## Rule Fact Sheet

November 10, 1999

### **Amendments to Rules Concerning Inspection and Enforcement of General NPDES Permits for Storm Water Run-off Associated with Construction Activity**

#99-178 (WPCB)

#### **Overview**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to rules concerning inspection and enforcement of general NPDES permits for storm water run-off associated with construction activity.

#### **Citations Affected**

Amends 327 IAC 15-5-10, Inspection and enforcement of general NPDES permits for storm water run-off associated with construction activity.

#### **Affected Persons**

All persons involved in construction activity requiring a general NPDES permit under 327 IAC 15-5.

#### **Reason(s) for the Rule**

Public Law 99-161 requires the Water Pollution Control Board to amend 327 IAC 15-5 before February 1, 2000, to reflect the requirements of IC 13-18-3-13.

#### **Economic Impact of the Rule**

There is no additional economic impact associated with this proposed amendment.

#### **Benefits of the Rule**

This amendment will clarify that where IDEM has clear evidence that a person other than the developer (e.g., the builder or a subcontractor of the builder) has caused or contributed to violations of 327 IAC 15-5, IDEM may initiate enforcement action against that person either in lieu of or in addition to initiating enforcement action against the developer.

### **Description of the Rulemaking Project**

Pursuant to IC 13-18-3-13 (as added by Public Law 99-161), IDEM shall determine which person is responsible for committing a violation of the rules on storm water run-off associated with construction activity. In determining which person is responsible for committing a violation of 327 IAC 15-5, IDEM shall, if appropriate, consider public records of ownership, building permits issued by local units of government, or other relevant information. IDEM's determination to proceed against a person for committing a violation of 327 IAC 15-5 must be based on the specific facts and circumstances related to a particular violation. Public Law 99-161 also requires the Water Pollution Control Board to amend 327 IAC 15-5 before February 1, 2000 to reflect the requirements of IC 13-18-3-13. IC 13-18-3-13 clearly states the requirements for the amendments to 327 IAC 15-5, and Public Law 99-161 requires the Water Pollution Control Board to take action before February 1, 2000.

### **Scheduled Hearings**

First Public Hearing: November 10, 1999, 1:30 p.m., in the Indiana Government Conference Center Room B, 402 West Washington Street, Indianapolis, Indiana.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:  
  
(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The amended rules are consistent with federal laws and rules.

### **Rulemaking Process**

This rulemaking was initiated under IC 13-14-9-7, which allows IDEM to forego the first public comment period in cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the first public comment period would provide no substantial benefit. The commissioner's findings and determination pursuant to IC 13-14-9-7 were published along with the second notice public comment period, notice of the first public hearing, and the draft rule. The Water Pollution Control Board holds the first public hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second public hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Secretary of State.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Kari Simonelic, Chief, Rules Section, Office of Water Management, (317) 233-8903 or (800) 451-6027 (in Indiana).